

1976  
Dec. 6

[TRIANTAFYLIDIS, P.]

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C.T.C.  
CONSULTANTS  
LTD.  
v.  
CYPRUS  
TOURISM  
ORGANISATION

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

C.T.C. CONSULTANTS LTD.,

*Applicants,*

*and*

THE CYPRUS TOURISM ORGANISATION,

*Respondent.*

(Case No. 283/76).

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*Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962—Principles applicable—Discretion of the Court—Public interest—Flagrant illegality—Contentions as to existence of—Even assuming that they are really arguable and they raise issues to be tried they cannot be treated as establishing existence of any flagrant illegality as would enable applicants to claim the provisional order applied for—Moreover applicants will suffer no irreparable damage if the provisional order is not granted—Application refused.* 5

*Administrative Law—Practice—Recourse for annulment—Early date of trial—Application for provisional order—It should not be taken for granted that when such order is applied for and refused then an early trial is the indispensable or inevitable alternative.* 10

By means of a recourse, filed on November 13, 1976, the applicants sought the annulment of the decision of the respondent to assign, after a competition for the purpose, the preparation of the plans for a tourist development project, to the interested day; on the same date they filed an application, under rule 13 of the Supreme Constitutional Court Rules for a provisional order suspending the effect of the *sub judice* decision pending the determination of the recourse; and they, also, sought an early date of trial of the recourse. 15 20

In support of the application for a provisional order applicants submitted that this was a case where there existed flagrant illegality of the *sub-judice* decision; and they argued, in this respect, that the said decision has been influenced by erroneous considerations; that it was reached without due inquiry and that there occurred procedural irregularities and misapplication 25

of the rules applicable to the competition which preceded such decision.

*Held, (after stating the principles governing the making of a provisional order—vide pp. 393-394 post).*

5 (1) That at this stage this Court does not have to, and should not decide about the validity of the contentions concerning flagrant illegality; that assuming that they are really arguable and that they raise serious issues to be tried, they still cannot be treated as establishing the existence of any flagrant illegality,  
10 as would enable the applicants to claim a provisional order.

(2) That this is not a case in which the applicants will suffer, if no provisional order is made, damage which will be irreparable, in the sense that it cannot be adequately estimated in terms of money, for the purposes of Article 146.6 of the constitution, in  
15 case they, eventually, succeed to annul the decision of the respondent, which is the subject matter of the present recourse; and, that, in the light of all the aforementioned considerations, taken cumulatively together, this Court has reached the conclusion, in the exercise of its discretionary powers, that the  
20 provisional order applied for should be refused.

(3) That this is not a case where, in view of its nature, it is necessary to expedite specially the proceedings; and that it should not be taken for granted that whenever a provisional order is applied for and refused then an early trial is the indis-  
25 pensable or inevitable alternative.

*Application refused.*

Cases referred to:

*Aspri and The Republic*, 4 R.S.C.C., 57;  
*Georghiades (No. 1) v. The Republic*, (1965) 3 C.L.R. 392;  
30 *Leonida v. The Republic* (1965) 3 C.L.R. 553;  
*Iordanou (No. 1) v. The Republic* (1966) 3 C.L.R. 308;  
*Cyprus Industrial and Mining Co. Ltd., (No. 2) v. The Republic*,  
(1966) 3 C.L.R. 474;  
*Artemiou (No. 2) v. The Republic*, (1966) 3 C.L.R. 562;  
35 *Iordanou (No. 2) v. The Republic*, (1966) 3 C.L.R. 696;  
*Iordanou (No. 3) v. The Republic*, (1966) 3 C.L.R. 705;  
*Vassiliades v. The Republic* (1966) 3 C.L.R. 708;  
*Markantonis v. The Republic*, (1966) 3 C.L.R. 714;

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*Kouppas v. The Republic* (1966) 3 C.L.R. 765;  
*Galazi v. The Minister of Education*, (1967) 3 C.L.R. 577;  
*HadjiKyriakou and Others (No. 1) v. The Council of Ministers  
 and Another* (1968) 3 C.L.R. 1;  
*Sepos v. The Presidential Election Returning Officer* (1968) 3 5  
 C.L.R. 82;  
*Georghiou (No. 1) v. The Republic* (1968) 3 C.L.R. 401;  
*Constantinidou v. The Republic* (1968) 3 C.L.R. 651;  
*Goulelis v. The Republic* (1969) 3 C.L.R. 583;  
*Pavlou and Another v. The Republic* (1971) 3 C.L.R. 120; 10  
*Georgiades v. The Republic* (1971) 3 C.L.R. 309;  
*Papadopoulou and Others v. The Republic* (1971) 3 C.L.R. 317;  
*Sofocleous v. The Republic* (1971) 3 C.L.R. 345;  
*Miltiadous and Others v. The Republic* (1972) 3 C.L.R. 341;  
*Cleanthous (No. 2) v. The Republic* (1972) 3 C.L.R. 376; 15  
*Lanitis Bros Limited (No. 1) v. The Central Bank of Cyprus*  
 (1974) 3 C.L.R. 160;  
*Papadopoullos v. The Republic* (1975) 3 C.L.R. 89;  
*The Bar Association of Nicosia and Others v. The Republic*, (1975)  
 3 C.L.R. 24. 20

**Application for a provisional order.**

Application for a provisional order suspending the effect of the decision of the respondent to assign the preparation of the plans of a tourism development project to the interested party pending the determination of a recourse against the validity of such decision. 25

*Chr. Kitromilides*, for the applicants.

*N. Charalambous*, Counsel of the Republic, with *M. Yiangou (Mrs.)*, for the respondent.

*Cur. adv. vult.* 30

The following decision was delivered by:—

TRIANAFYLLIDES, P.: The applicants have filed the present recourse on November 13, 1976, seeking, in effect, the annulment of the decision of the respondent to assign, after a competition for the purpose, the preparation of the plans for a tourism development project, in the area known as “Dasoudhi” in Limassol, to PAC Ltd (referred to hereinafter as the “interested party”). 35

The applicants have on the same date filed an application, under rule 13 of the Supreme Constitutional Court Rules, for a provisional order suspending the effect of the *sub judice* decision pending the determination of the present recourse; they are, also, seeking an early date of trial of this recourse.

On November 22, 1976, the respondent undertook, on its own initiative, to suspend any further action in the matter pending the decision of the Court as regards the application for a provisional order.

On November 25, 1976, the opposition of the respondent to the application for a provisional order was filed. To the affidavit in support thereof there have been attached a number of relevant documents to which there is no need to refer in a detailed manner, at this stage, but the contents of which I have considered, together with all the other material before me, for the purpose of deciding whether or not to make the provisional order applied for by the applicants. The hearing of the application for such an order took place on November 30, 1976, and I have reserved my decision until today.

The making of a provisional order under rule 13, above, involves the exercise of judicial discretion on the basis of the circumstances of the particular case and in the light of the principles which should guide an administrative Court when dealing with such an application; such principles have been expounded, and applied in, *inter alia*, the following cases: *Aspri and The Republic*, 4 R.S.C.C. 57, *Georghiades (No. 1) v. The Republic*, (1965) 3 C.L.R. 392, *Leonida v. The Republic*, (1965) 3 C.L.R. 553, *Iordanou (No. 1) v. The Republic*, (1966) 3 C.L.R. 308, *Cyprus Industrial and Mining Co. Ltd., (No. 2) v. The Republic*, (1966) 3 C.L.R. 474, *Artemiou (No. 2) v. The Republic*, (1966) 3 C.L.R. 562, *Iordanou (No. 2) v. The Republic*, (1966) 3 C.L.R. 696, *Iordanou (No. 3) v. The Republic*, (1966) 3 C.L.R. 705, *Vassiliades v. The Republic*, (1966) 3 C.L.R. 708, *Markantonis v. The Republic*, (1966) 3 C.L.R. 714, *Kouppas v. The Republic*, (1966) 3 C.L.R. 765, *Galazi v. The Minister of Education*, (1967) 3 C.L.R. 577, *HadjiKyriakou and Others (No. 1) v. The Council of Ministers and Another*, (1968) 3 C.L.R. 1, *Sepos v. The Presidential Election Returning Officer*, (1968) 3 C.L.R. 82, *Georghiou (No. 1) v. The Republic*, (1968) 3 C.L.R. 401, *Constantinidou v. The Republic*, (1968) 3 C.L.R. 651, *Goulelis v. The Republic*, (1969) 3 C.L.R. 583, *Pavlou and Another v. The Republic*,

(1971) 3 C.L.R. 120, *Georghiades v. The Republic*, (1971) 3 C.L.R. 309, *Papadopoulou and Others v. The Republic*, (1971) 3 C.L.R. 317, *Sofocleous v. The Republic*, (1971) 3 C.L.R. 345, *Miltiadous and Others v. The Republic*, (1972) 3 C.L.R. 341, *Cleanthous (No. 2) v. The Republic*, (1972) 3 C.L.R. 376, *Lanitis Bros. Limited (No. 1) v. The Central Bank of Cyprus*, (1974) 2 C.L.R. 160, *Papadopoulos v. The Republic*, (1975) 3 C.L.R. 89, *The Bar Association of Nicosia and others v. The Republic*, (1975) 3 C.L.R. 24. 5

On the strength of the material before me I do accept that the tourism development project in question has to be proceeded with urgently in the public interest; and this is a factor to which I have had to pay due regard because, in considering whether to grant or refuse a provisional order in an administrative recourse, such as the present one, it has always to be borne in mind that the public interest should as a rule, prevail over the private interest of any individual. 10 15

The main ground on which the applicants have based their submissions in support of the application for such an order is that this is a case where there exists flagrant illegality of the *sub judice* decision. I have considered all arguments which have been put forward in this respect, such as that the said decision has been influenced by erroneous considerations, that it was reached without due inquiry and that there occurred procedural irregularities and misapplication of the rules applicable to the competition which preceded such decision. 20 25

At this stage I do not have to, and I should not, decide about the validity of the above contentions; assuming, however, for the moment, that they are really arguable and that, therefore, they raise serious issues to be tried, they still cannot, in my opinion, be treated as establishing the existence of any flagrant illegality, as would enable the applicants to claim a provisional order suspending the taking of effect of the *sub judice* decision. 30

Moreover, I cannot accept that this is a case in which the applicants will suffer, if no provisional order is made, damage which will be irreparable, in the sense that it cannot be adequately estimated in terms of money, for the purposes of Article 146.6 of the Constitution, in case they, eventually, succeed to annul the decision of the respondent, which is the subject matter of the present recourse. 35 40

In the light of all the aforementioned considerations, taken cumulatively together, I have reached the conclusion, in the exercise of my relevant discretionary powers, that the provisional order applied for by the applicants should be refused.

5 I have considered, *ex abundanti cautela*, whether it is required, in the interests of justice, to make such a provisional order not until the determination of the case—as sought by the applicants—but temporarily, for a shorter period of time, as was done in the cases of *Iordanou (No. 2)* and *Kouppas, supra*, but I do not  
10 think that there exist in the present instance such special circumstances (as in the said two cases) which would justify my adopting that course.

Regarding the request of the applicants for an early date of trial, all I need say in this respect, on this occasion, is that it is  
15 expected that the Opposition will be filed as soon as possible, within the time prescribed under the relevant Rules; and then this case will take its normal course. This is not a case where, in view of its nature, it is necessary to expedite specially the proceedings; and it should not be taken for granted that whenever a  
20 provisional order is applied for and refused then an early trial is the indispensable or inevitable alternative.

*Application refused.*